

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

ALBERTO RENE PACHECO,

Petitioner,

v.

2:06-CV-0143

NATHANIEL QUARTERMAN, Director,
Texas Department of Criminal
Justice, Institutional Division,

Respondent.

REPORT AND RECOMMENDATION
TO DISMISS PETITION FOR A WRIT OF HABEAS CORPUS
AS TIME BARRED UNDER 28 U.S.C. § 2244(d)

Came this day for consideration the Petition for a Writ of Habeas Corpus by a Person in State Custody filed by petitioner ALBERTO RENE PACHECO on June 8, 2006. By this habeas application, petitioner appears to be challenging his conviction, out of the 181st Judicial District Court of Potter County, Texas for the offense of delivery of a controlled substance and the resultant ninety (90) year sentence.

Respondent filed a Motion to Dismiss as Time-Barred with Brief in Support on July 12, 2006 wherein he fully and accurately briefed the issue of limitations. Petitioner has not filed a response to the motion to dismiss. Upon review of respondent's motion, the Court is of the opinion respondent is correct in his assertion that petitioner's habeas application is time barred. Respondent cites *Salinas v. Dretke*, 354 F.3d 425, 429-31 (5th Cir. 2004) as support for his position that petitioner is not entitled to restart the limitations period upon the denial of his out of time petition for discretionary review. Further, as stated above, petitioner has failed to respond to respondent's motion to dismiss and has specifically failed to address the *Salinas* case and

show it is not applicable to him and/or that it is distinguishable from this case. Petitioner has further failed to assert or demonstrate he is entitled to equitable tolling. Therefore, it is the opinion of the undersigned United States Magistrate Judge that petitioner's application for a writ of habeas corpus should be DISMISSED as time barred.

RECOMMENDATION

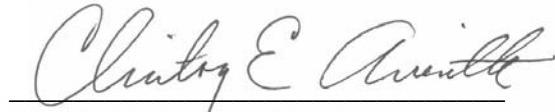
For the reasons set forth herein and in respondent's July 12, 2006 Motion to Dismiss as Time-Barred, it is the RECOMMENDATION of the United States Magistrate Judge to the United States District Judge that the petition for a writ of habeas corpus filed by petitioner ALBERTO RENE PACHECO be DISMISSED as time barred.

IV.
INSTRUCTIONS FOR SERVICE

The United States District Clerk is directed to send a file-marked copy of this Report and Recommendation to petitioner by the most efficient means available.

IT IS SO RECOMMENDED.

ENTERED this 7th day of August 2006.



CLINTON E. AVERITTE
UNITED STATES MAGISTRATE JUDGE

*** NOTICE OF RIGHT TO OBJECT ***

Any party may object to these proposed findings, conclusions and recommendation. In the event a party wishes to object, they are hereby NOTIFIED that the deadline for filing objections is eleven (11) days from the date of filing as indicated by the file mark on the first page of this recommendation. Service is complete upon mailing, Fed. R. Civ. P. 5(b), and the parties are allowed a 3-day service by mail extension, Fed. R. Civ. P. 6(e). Therefore, any

objections must be filed on or before the fourteenth (14th) day after this recommendation is filed. See 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b); R. 4(a)(1) of Miscellaneous Order No. 6, as authorized by Local Rule 3.1, Local Rules of the United States District Courts for the Northern District of Texas.

Any such objections shall be made in a written pleading entitled “Objections to the Report and Recommendation.” Objecting parties shall file the written objections with the United States District Clerk and serve a copy of such objections on all other parties. A party’s failure to timely file written objections to the proposed findings, conclusions, and recommendation contained in this report shall bar an aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings, legal conclusions, and recommendation set forth by the Magistrate Judge in this report and accepted by the district court. *See Douglass v. United Services Auto. Ass’n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).